

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: LEAD CONTAMINATED
FRUIT JUICE PRODUCTS
MARKETING AND SALES
PRACTICES LITIGATION

MDL NO. 2231

THIS FILING RELATES TO ALL ACTIONS

DEFENDANTS' MOTION TO AMEND CASE CAPTION

Defendants, The Coca-Cola Company, Del Monte Corporation, Dole Food Company, Gerber Products Company, The Hain Celestial Group, Inc., The J.M. Smucker Company, Inc., KFP International, Ltd., Mott's LLP and Topco Associates, L.L.C., Trader Joe's Company, and Welch Foods, Inc., (collectively, "Defendants") respectfully seek leave to amend the case caption in the Multidistrict Litigation so as to state "IN RE: FRUIT JUICE PRODUCTS MARKETING AND SALES PRACTICES LITIGATION." As grounds in support of this motion, Defendants state as follows:

1. On April 19, 2011, the Judicial Panel on Multidistrict Litigation transferred to this district four actions for consolidated pretrial proceedings. The case caption that relates to all actions is "IN RE: LEAD CONTAMINATED FRUIT JUICE PRODUCTS MARKETING AND SALES PRACTICES LITIGATION."

2. As stated, the case caption implies that the Defendants' fruit juice and other products are contaminated with lead. Whether Defendants' products are "contaminated" with lead is very much in dispute. Plaintiffs call Defendants' products "contaminated" because they were "reported to contain lead" by the Environmental Law Foundation ("ELF"). *See, e.g.,*

Second Amended Complaint by Lydia Littlefield, Suzanne Kennedy, Karen Poulis and Nicole Crawford, ¶¶ 2-3. (D.I. 11). But, as Defendants’ forthcoming motion to dismiss will show, the Food and Drug Administration (“FDA”) has recognized that “[m]any food products would be expected to contain very small amounts of [lead]” and that “[l]ead is present in small amounts throughout the environment due to its natural occurrence and its release into the environment by human activities.” *Low Levels of Lead in Some Juice Products*, available at <http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/FruitsVegetablesJuices/ucm233520.htm> (Nov. 10, 2010). The FDA has established a 50 parts per billion (“ppb”) threshold as the maximum recommended level for fruit juice. Plaintiffs do not (and cannot) allege that any of Defendants’ products contained lead in excess of FDA standards. Indeed, the FDA itself tested some of the products in the ELF’s letter—the same source Plaintiffs use to designate products as “contaminated”—and concluded that all of the products it tested met FDA standards.

3. It would be prejudicial to Defendants for every document filed in the case to contain Plaintiffs’ version of the central disputed issue, as part of the case caption. The case caption should be a neutral description of the case. It should not presuppose a wrong that Defendants dispute. And, it should not suggest that Defendants’ products pose unacceptable health risks, where the FDA has reached the opposite conclusion and where Plaintiffs do not even allege a physical injury to themselves, to their children, or to any member of any of the proposed classes.

4. Accordingly, Defendants respectfully request that instead of including a conclusory statement on a contested issue, the case caption be amended to delete “LEAD CONTAMINATED” and state as follows: “IN RE: FRUIT JUICE PRODUCTS MARKETING AND SALES PRACTICES LITIGATION.”

5. Defendants conferred with counsel for Plaintiffs, who have indicated Plaintiffs will not oppose the relief sought in this motion, though they do not join Defendants' motion.

WHEREFORE, the Defendants respectfully request that the Court enter an Order amending the case caption for the Multidistrict Litigation to read as follows: "IN RE: FRUIT JUICE PRODUCTS MARKETING AND SALES PRACTICES LITIGATION."

Respectfully submitted,

THE COCA-COLA COMPANY, DEL
MONTE CORPORATION, DOLE FOOD
COMPANY, GERBER PRODUCTS
COMPANY, THE HAIN CELESTIAL
GROUP, INC., THE J.M. SMUCKER
COMPANY, INC., KFP INTERNATIONAL,
LTD., MOTT'S LLP AND TOPCO
ASSOCIATES, L.L.C., TRADER JOE'S
COMPANY, AND WELCH FOODS, INC.

By their attorneys,

/s/ Courtney M. Schou

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Dated: July 22, 2011

LOCAL RULE 7.1(A)(2) CERTIFICATION

I, Courtney M. Schou, Attorney for the Defendants, hereby certify that Plaintiffs and Defendants conferred regarding the foregoing motion. The Plaintiffs do not oppose this motion.

/s/ Courtney M. Schou
Courtney M. Schou

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document, filed through the ECF system, will be sent electronically to the registered participants on the Notice of Electronic Filing (NEF) and paper copies will be send to those indicated as non-registered participants on July 22, 2011.

/s/ Courtney M. Schou
Courtney M. Schou